IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) S.B.CRIMINAL MISC. PETITION NO. 464/2003
(Smt. Rekha Mehta Vs. Prashant Kothari & Anr.)

(2) S.B.CRIMINAL MISC. PETITION NO. 465/2003
(Smt. Rekha Mehta Vs. Prashant Kothari & Anr.)

(3) S.B.CRIMINAL MISC. PETITION NO. 466/2003
(Smt. Rekha Mehta Vs. Prashant Kothari & Anr.)

Date of Order : 28/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. J.K.Chanda for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. Anuj Kala for the non-petitioner No.1.

BY THE COURT:-

These three criminal misc. petitions under Section 482 of Code of Criminal Procedure,1973 (for short 'the Code' hereinafter) are directed against the judgment and order dated 08.04.2003 passed by Additional Sessions Judge No.2, Jodhpur (for short 'the revisional court' hereinafter) in Criminal Revisions No.23/02,24/02 & 22/02 against the order dated 11.5.2002 passed by Additional Chief Judicial Magistrate No.3, Jodhpur (for short 'the trial court' hereinafter) in Criminal Complaint Cases No.196/98, 197/98 and 195/98, whereby the revision petitions

filed by complainant non-petitioner No.1 were allowed and the order passed by the trial court in the afore-noticed criminal complaint cases dated 11.5.2002 was set aside. Since all the criminal misc. petitions involve common question of law and facts and are between the same parties, therefore, with the consent of learned counsel for the parties, they are being heard and decided together. The facts of Criminal Misc. Petition No. 464/03 are taken as leading case.

It is contended by the learned counsel for the petitioner that the cheque in question was issued by the husband of petitioner, Shri Vijay Mehta, who at the relevant time was the Manager of the firm M/s Computech Advertising and Designing, Jodhpur and therefore, Shri Vijay Mehta, being the Manager of the said firm is the drawer of the cheque and as such, the complaint against the proprietor of the firm i.e. the petitioner is not maintainable. It is further contended that without impleading Shri Vijay Mehta who is husband of the petitioner and Manager of the firm of which the petitioner is a proprietor, the complaint is not maintainable.

Learned counsel for the non-petitioner supported the order of the revisional court and contended that the trial court fell in error in reviewing its earlier order dated 20.7.98 whereby

the trial court took the cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) against the petitioner. Learned counsel for the non-petitioner has relied on a decision of this Court in Narendra Nalwaya Vs. Ishwar Lal 2005 (3) RDD 238 (Raj.) wherein this Court has held that the trial court after conducting necessary inquiry took cognizance of offence and framed charge, and subsequent thereto, Court had no jurisdiction to accept the application of accused respondent under Sections 203 & 204 of the Code and discharge the accused respondent. Once the trial court has taken the cognizance of the offence and framed the charge against accused respondent it had no jurisdiction to review or recall it's order.

In Adalat Prasad Vs. Rooplal Jindal & ors., JT 2004 (7) SC 243, the Hon'ble Apex Court held that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order; hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in

invoking Section 482 of the Code.

The view taken by the Hon'ble Supreme Court has been reiterated by a Three Judge Bench of the Hon'ble Supreme Court in Subramanium Sethuraman Vs. State of Maharashtra & Anr., 2004 Cr.L.J. 4609, and held that issuance of process under Section 204 is a preliminary step in the stage of trial contemplated in Chapter XX of the Code. Such an order made at a preliminary stage being an interlocutory order, same cannot be reviewed or reconsidered by the Magistrate, there being no provision under the Code for review of an order by the same Court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order.

Keeping in view the law propounded by Hon'ble Supreme Court, in my view, the trial court fell in error in reviewing its order taking cognizance. The order of the trial court reviewing/recalling its earlier order of taking cognizance is without jurisdiction, cannot be sustained and is liable to be set aside. In this view of the matter, the revisional court was justified in setting aside the order of the trial court though not on the above premises, but on other grounds.

So far as the liability of the petitioner for the cheque in question as a proprietor of the firm, which was dishonoured for want of sufficient fund and issued by Manager of the firm who is none else but is the husband of the petitioner is concerned, this controversy stands concluded by the decision of Hon'ble Supreme Court in Rajneesh Aggarwal Vs. Amit J. Bhalla AIR 2001 SC 518 wherein the Apex Court held as under :-

> "Mere dishonour of a cheque would not raise to cause of action unless the payee makes a demand in writing to the drawer of the cheque for the payment and the drawer fails to make the payment of the said amount of money to the payee. In the instant case, the cheques had been issued by a company through its Director. The appellant payee had issued notice to the said Director. Notwithstanding the service of the notice, the amount in question was not paid. The object of issuing notice indicating the factum of dishonour of the cheques is to give an opportunity to the drawer to make payment within 15 days, so that it will not be necessary for the payee to proceed against in any criminal action, even though the bank dishonoured the cheques. The Director who had signed the cheque, it was incumbent upon him to see that the payments are made within the stipulated period of 15 days. It was not disputed that the Director has not signed the cheques, nor was it disputed that he was not the Director of the Company. Having regards to the object of issuance of such notice, the notices cannot be construed in a narrow technical way without examining the substance of the matter. In the circumstances of the case it cannot be said that there was no notice to the drawer of the cheque, as required under S. 138 of the Negotiable Instruments Act."

In Harsukhbhai Lakshmanbhai Vs. State of Gujarat, 2002 (1) ALL MR (JOURNAL) 41, the Gujarat High Court held that the cheque signed by one partner and the other partner who was taking very active part in the business of the firm assured the complainant that as and when the cheques will be presented in the Bank, the same will be honoured in due course, he was liable on dishonour of cheque and offence under S. 138 stood proved against him though cheques were not signed by him.

Keeping in view the decision of Hon'ble Supreme Court, in my view, it cannot be said that the complaint is not maintainable. On the contrary, in the application filed by the petitioner, the petitioner has clearly averred that she is the proprietor of the firm and her husband Vijay Mehta being Manager of the firm issued the cheque in favour of the non-petitioner complainant, though in the complaint filed by the non-petitioner it has been specifically stated that the cheque has been signed and issued by the present petitioner being proprietor of the firm. Be that as it may. Whether the cheque has been issued by the present petitioner or her husband being the Manager of the firm, keeping in view the decision of Hon'ble Supreme Court in Rajneesh Aggarwal Vs. Amit J. Bhalla (supra), in my view, prima-facie the petitioner is liable for the cheque in question and the complaint is maintainable. In the

circumstances, therefore, it cannot be said that the order impugned would result in serious miscarriage of justice or abuse of the process of any Court warranting interference in the inherent jurisdiction of this Court.

In the result, all the three petitions are devoid of any merit and accordingly dismissed. Stay petitions also stand dismissed. Record of the court below be returned forthwith.

(H.R.PANWAR),J.

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